Summary: The Plaintiff filed a motion for protective order and sought injunctive relief. The Court denied the motion finding that the Plaintiff had not met his burden of establishing irreparable harm and that the granting of injunctive relief would not serve the public interest.

Case Name: Wheeler v. Schuetzle, et al.
Case Number: 1-07-cv-75
Docket Number: 4
Date Filed: 11/21/07
Nature of Suit: 550

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION

LeRoy K. Wheeler, Plaintiff, vs. State of North Dakota Tim Schuetzle Leann K. Bertsch Defendants.	)	**ORDER DENYING PLAINTIFF'S MOTION FOR PROTECTIVE ORDER** Case No. 1:07-cv-075

On November 19, 2007, the plaintiff, LeRoy K. Wheeler, filed a "Motion for Protective Order." For the reasons set forth below, the motion is denied.

I. BACKGROUND

Leroy Wheeler is an inmate at the North Dakota State Penitentiary ("NDSP"). On October 26, 2007, he filed a pro se complaint with the court pursuant to 42 U.S.C. § 1983. Wheeler alleged that NDSP officials have censored his legal mail and distributed his confidential information to other

inmates. He also complained about what he perceived as the preferential treatment afforded to Derek Stanton, a federal inmate at the NDSP.

On November 19, 2007, Wheeler filed this "Motion for Protective Order." Wheeler reiterated the factual basis for his complaint and also asserted that, in retaliation for filing his complaint, kitchen staff are "spreading rumors of firing Wheeler from his kitchen job and transferring him to the federal prison system (Levenworth) (sic). . . ." He requests that the court "issue a protective order against any retaliatory conduct concerning said cause such as loss of job, housing status, and transferring out of the facility, or any other retaliatory conduct concerning Wheeler blowing the Whistle on NDSP officials."

II. LEGAL DISCUSSION

Although the motion now before the court is styled as a request for a protective order, it is clear that it is injunctive relief that Wheeler seeks. "[W]hether a preliminary injunction should issue involves consideration of (1) the threat of irreparable harm to the movant; (2) the state of balance between this harm and the injury that granting the injunction will inflict upon other parties litigant; (3) the probability that [the] movant will succeed on the merits; and (4) the public interest." Goff v. Harper, 60 F.3d 518, 520 (8th Cir. 1995) (quoting Dataphase Systems, Inc. v. C.L. Sys, Inc., 640 F.2d 108, 114 (8th Cir. 1981) (*en banc*)); see also Baker Electric Co-op, Inc. v. Chaske, 28 F.3d 1466, 1472 (8th Cir. 1994) (explaining that no single factor is dispositive and that all must be given consideration).

It is well-established that the burden of establishing the necessity of an injunction is on the movant. See Baker Electric Co-op, Inc. v. Chaske, 28 F.3d at 1472; see also Brookings v. Wissota

Promoters Assoc., Inc., 142 F.Supp. 2d 1149, 1151 (D.N.D. 2000). "Moreover, in the prison context, a request for injunctive relief must always be viewed with great caution because judicial restraint is especially called for in dealing with the complex and intractable problems of prison administration." Goff v. Harper, 60 F.3d at 520 (internal quotations omitted); see also Bacon v. Taylor, 419 F. Supp. 2d 635, 638 (Del. 1996) (providing that when a request for injunctive relief entails court interference with a state prison's administration, the court must consider the principles of federalism in determining the availability and scope of equitable relief).

Having carefully considered and weighed the factors enumerated above, the Court finds that Wheeler has not met his burden and established that the imposition of an injunction (a protective order) is warranted. First, there is little in Wheeler's submissions to suggest that he has been prejudiced in any irreparable way or that there is any real and immediate threat to his job, housing status, or continued placement at the NDSP. His fears are fueled by rumor and innuendo which he attributes to penitentiary staff as opposed to any warnings, reprimands, or direct communications he has received from anyone in a position of authority. Despite the vague, conclusory allegations regarding the possibility of future prejudice, the fact remains that his status at the NDSP remains unchanged.

Second, because the relief sought by Wheeler goes directly to the manner in which the penitentiary operates, the request for an injunction or a protective order must be viewed with caution and judicial restraint. Prison administrators must "be accorded wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security." Bell v. Wolfish, 441 U.S. 520, 547 (1979). Wheeler has failed to demonstrate that the relief he seeks outweighs the defendants'

interest in the maintenance of security and warrants the court's involvement in what are essentially administrative functions.

Third, the granting of injunctive relief in this case would not serve the public interest. The public has a strong interest in the safe, efficient, and orderly operation of its prison system. See e.g., Meachum v. Fano, 427 U.S. 215, 229 (1976). This interest would not be served if this Court were to give little deference to penitentiary officials and micro-manage every picayune dispute that arises within the institution.

Finally, having reviewed Wheeler's claims, the Court concludes that he has not demonstrated a likelihood of success on the merits as the allegations are vague and conclusory.

III. CONCLUSION

Wheeler's Motion for Protective Order (Docket No. 3) is **DENIED**.

IT IS SO ORDERED.

Dated this 21st day of November, 2007.

/s/ Daniel L. Hovland
Daniel L. Hovland, Chief Judge
United States District Court